

ORDINANCE NO. _____

AN ORDINANCE CREATING AND ENACTING CHAPTER 77A TO
THE ROCHESTER CODE OF ORDINANCES, RELATING TO THE
ESTABLISHMENT OF A STORM WATER UTILITY.

THE COMMON COUNCIL OF THE CITY OF ROCHESTER DO ORDAIN:

Section 1. Chapter 77A to the Rochester Code of Ordinances is hereby
created and enacted to read as follows:

77A. STORM WATER UTILITY

77A.01. Findings and Determination. Subdivision 1. Storm water runoff contributes to non-point source pollution of the City's water resources. The City prepared the Rochester Comprehensive Storm Water Management Plan ("Plan") in 1997, updated it in 1999, and incorporated it by reference into Rochester's Code of Ordinances - Land Development Manual, thereby requiring storm water management and encouraging a regional approach to managing storm water.

Subd. 2. There is now a need to supplement the Plan with a Storm Water Pollution Prevention Program ("Program") in response to the National Pollutant Discharge Elimination System (NPDES) small municipal separate storm sewer system (MS4) permit requirements and City growth. The Program hereby incorporates the Plan by reference. The Program goal is to effectively manage storm water so that the chemical, biological, and physical health of the City's water resources are maintained and improved. All real property in the City contributes to the need for storm water management and all its citizens' benefit from the Program.

Subd. 3. Heretofore, the Plan has been financed and paid for through Storm Water Management Plan Area Charges ("Charges") or developer-financed Storm Water Management System ("System") construction, in addition to other revenues of the City. It is now necessary and desirable to provide a revised approach to recover some or all of the future costs of implementing the Program. A Storm Water Utility Fee ("Fee") is hereby adopted, as provided in this Chapter. Additionally, Charges will be deemed mandatory and developer-financed System construction will not be allowed as an alternative to Charges, unless otherwise determined by the Director of Public Works to meet sub-watershed specific storm water management needs.

Subd. 4. In imposing Fees and Charges, it is necessary to establish a methodology that undertakes to make them just and equitable. Taking into account the status of completion of the System, past methods of recovering System cost, the City's geophysical setting, permit requirements, and other relevant factors, it is determined that it would be just and equitable to assign the responsibility for some or all of the costs of

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implementing the Program on the basis of impervious area and Land Use Factors; the two primary predictors of storm water runoff volumes, runoff discharge rates, and impacts to our water resources. Additionally, Program implementation costs will be taken into consideration along with indirect and direct benefits resulting from the Program.

Subd. 5. It is the City's intent to create a Storm Water Utility ("Utility") based on factors that influence runoff quantity and quality, including land use and the amount of impervious surface on the property. It is in the public's interest to fund the Program with a user Fee that allocates the costs of storm water management to all property owners in the City and that further seeks to base the amount of the Fee on the extent that each parcel of real property contributes to the need for the Program. A Utility offers financial management options that can assist the City in implementing the Program to maintain and improve its water resources.

77A.02. Statement of Legislative Intent. Subdivision 1. In the exercise of its governmental authority to protect the environment and to promote the public health, safety, convenience and general welfare of its citizens and visitors, the City intends to operate and maintain a System and implement a Program to manage the quantity and quality of storm water. This Chapter is adopted in the further exercise of such authority and for the same purposes.

Subd. 2. Assigning Fees and Charges based upon expected typical storm water impacts cannot be done practicably with mathematical precision, but can only be accomplished within reasonable and practical limits. It is this Chapter's purpose to establish a reasonable and practical methodology for assigning such Fees and Charges.

77A.03. Definitions. Subdivision 1. Unless the context specifically indicates otherwise, the meaning of the terms used in this chapter shall be as follows:

Subd. 2. The term "Charges" is synonymous with "Storm Water Management Plan Area Charges" and shall mean the Charges applied to new development or redevelopment projects for the availability of and connection to the City's System and to assist in providing regional storm water quality improvements and storm water runoff quantity control.

Subd. 3. The term "Credit" shall mean a conditional reduction in the amount of the Fee to an individual Non-Residential property owner based on the provision of and continuing presence of an effectively maintained and operated Structural Best Management Practice or the continuing provision of a Non-Structural Best Management Practice by a property owner, which system, facility, service or activity reduces the City's cost of providing storm water management services or System components, according to the provisions of the Storm Water Utility Fee Credit Manual. Credits do not apply to Charges.

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Subd. 4: The term “Developable Acres” shall mean the gross acres of a development or redevelopment project, less the acres of:

- A. Wetlands,
- B. Floodways,
- C. Public storm water detention and sedimentation facilities,
- D. Private storm water detention and sedimentation facilities, if the property as developed is not served by an existing or planned downstream detention and sedimentation facilities,
- E. Parkland, and
- F. Natural slopes in excess of 18% that will remain after site grading is completed, consistent with the City-approved grading plan for the development.

Subd. 5. The term “Developed” shall mean real property that has been altered from its natural state by the addition to or construction of impervious area on all or part thereof.

Subd. 6. The term “Fee” shall be synonymous with “Storm Water Utility Fee” and shall mean the monthly Fee imposed on developed Residential and Non-Residential parcels so as to assist the City in implementing its Program.

Subd. 7. The term “Fund” shall be synonymous with “Storm Water Utility Fund” and shall mean the fiscal and accounting entity created by this Chapter with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, that are segregated for the purpose of implementing specific storm water management activities or attaining storm water management objectives in accordance with the Program and this Chapter.

Subd. 8. The term “Impervious Area” shall mean a surface area that is altered, in conjunction with the removal of vegetation, and compacted or covered with material that is resistant to the infiltration of water, including but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or other surfaces which impede the natural filtration and infiltration of storm water.

Subd. 9. The term “Incentive” shall mean a monetary gain, such as a rebate or a coupon, that is earned by a Residential property owner for implementing and maintaining

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Structural or Non-Structural Best Management Practices that benefit the City's Program and System.

Subd. 10. The term "Land Use Factor" ("LUF") shall mean a number used to integrate the amount of impervious area on a parcel, land use types and densities, storm water runoff flow, and pollutant loading potential. A parcel-specific Land Use Factor is extrapolated for each Non-residential parcel using parcel-specific impervious area measurements and the LUF parameters contained in Table 8.1 of the Plan and expanded upon in Section 77A.05, subd. 2.

Subd. 11. The term "Non-Residential" shall mean a Utility customer class that refers to all parcels other than Undeveloped parcels, Residential parcels, and townhouse development common areas.

Subd. 12. The term "Non-Structural Best Management Practices" shall mean services or activities that help reduce the quantity and improve the quality of storm water runoff.

Subd. 13. The term "Plan" shall be synonymous with "Storm Water Management Plan" and refers to the 1999 Rochester Comprehensive Storm Water Management Plan and any subsequent addenda or supplements, such as technical memoranda or sub-watershed reports that are hereby adopted by this Chapter.

Subd. 14. The term "Program" shall be synonymous with "Storm Water Pollution Prevention Program" ("Program") and shall mean the assemblage of NPDES Phase II MS4 permit requirements and any additional planning, design, construction, inspection, regulation, improvement, operation, maintenance, and replacement of the System and the implementation of activities related to the management of storm water, such as, but not limited to: storm water education and public participation, water quality protection, drainage, grading and erosion control, pollution prevention, and illicit discharge detection and elimination.

Subd. 15. The term "Property Owner" shall mean any partnership, corporation or any person who (alone, jointly or severally with others) has:

- A. Legal title to any tangible or intangible real, personal or mixed property, with or without accompanying actual possession thereof; or
- B. Has charge, care or control of any dwelling or apartment as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner.

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Any such partnership, corporation or person representing the actual owner shall be bound to comply with the provisions of this Chapter to the same extent as if they were the owner.

Subd. 16. The term “Residential” shall mean a Utility customer class that refers to any developed parcel containing single-family homes, duplexes, and townhouses.

Subd. 17. The term “Storm Water Unit Rate” shall mean the amount of money needed on a per parcel basis, given the individual parcel sizes and percent impervious areas of all developed parcels in the City that, in total, will provide Utility revenues sufficient to provide the necessary services. The Storm Water Unit Rate is expressed in dollars per acre per month.

Subd. 18. The term “Structural Best Management Practices” shall mean constructed structural improvements that help reduce the quantity (rates or volumes) and improve the quality of storm water runoff.

Subd. 19. The term “System” shall be synonymous with “Storm Water Management System” and shall mean a System of storm and surface water management facilities including, but not limited to: drains, inlets, catch basins, storm sewers, manholes, outfalls, channels, ditches, drainage easements, retention and detention basins and ponds, infiltration facilities, or any other constructed or natural features utilized to convey and/or treat surface water, storm water, or snowmelt.

Subd. 20. The term “Townhouse” shall mean a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with open space on at least two sides.

Subd. 21. The term “Undeveloped” shall mean a parcel of real property that has an inconsequential amount of impervious area (<1%) and has established vegetative cover.

Subd. 22. The term “Utility” shall be synonymous with “Storm Water Utility” and shall mean the organization providing Program services subject to special governmental regulations.

Subd. 23. The term “Water” shall mean, for the purposes of storm water management, storm water, surface water, or snowmelt.

77A.04. Establishment of the Utility and Fund. Subdivision 1. Pursuant to Minnesota Statute, Section 444.075, the City of Rochester hereby establishes a Utility and authorizes the imposition of just and equitable Fees and Charges for the use, availability, operation, maintenance, replacement, and development of its System and implementation of its Program.

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Subd. 2. All Fees and Charges, along with grants, permit or inspection fees, interest earnings, and other revenues collected for the Utility, shall be deposited in the Fund. The Council may make additional appropriations to the Fund. All disbursements from the Fund shall be for the purposes set forth in section 77A.11.

Subd. 3. The Utility will be under the administration of the Director of Public Works.

77A.05. Rate Structure. Subdivision 1. The Council finds that, irrespective of the size of a Residential parcel, the amount of storm water runoff and pollutant loading from Residential development is similar and that it would be excessively and unnecessarily expensive to determine precisely the percent impervious area for each such Residential parcel. Therefore, each Residential parcel in the City shall be charged a uniform Residential Fee, regardless of the size of each parcel or the amount of impervious area on each parcel. For the purpose of calculating the Fee, all Residential parcels shall be considered to be 0.235 acres with 25% impervious area. The Residential Fee will be calculated by multiplying a LUF of 1.0 by an average parcel size of 0.235 acres times the storm water unit rate, as established by Council resolution. [Fee = (LUF= 1.0) x (parcel size=0.235 acres) x (storm water unit rate)].

Subd. 2. The Fee for Non-Residential parcels of land shall be calculated by multiplying a LUF (extrapolated from the LUF table shown below using the parcel's individually-measured percent impervious area) by the size of the parcel (in acres) and by the storm water unit rate, as established by City Council resolution. [Fee = (LUF) x (parcel size in acres) x (storm water unit rate)]. The minimum Fee for Non-Residential parcels shall equal the Residential Fee.

% IA	LUF	% IA	LUF	% IA	LUF	% IA	LUF
1	0.37	26	1.03	51	1.94	76	3.58
2	0.39	27	1.07	52	1.98	77	3.66
3	0.42	28	1.10	53	2.02	78	3.74
4	0.45	29	1.13	54	2.05	79	3.82
5	0.47	30	1.17	55	2.09	80	3.90
6	0.50	31	1.20	56	2.13	81	3.98
7	0.53	32	1.23	57	2.17	82	4.06
8	0.55	33	1.27	58	2.21	83	4.14
9	0.58	34	1.30	59	2.25	84	4.22
10	0.61	35	1.33	60	2.30	85	4.30
11	0.63	36	1.37	61	2.38	86	4.36
12	0.66	37	1.40	62	2.46	87	4.42
13	0.68	38	1.44	63	2.54	88	4.48
14	0.71	39	1.48	64	2.62	89	4.54
15	0.74	40	1.52	65	2.70	90	4.60
16	0.76	41	1.55	66	2.78	91	4.64
17	0.79	42	1.59	67	2.86	92	4.68
18	0.82	43	1.63	68	2.94	93	4.72
19	0.84	44	1.67	69	3.02	94	4.76
20	0.87	45	1.71	70	3.10	95	4.80
21	0.89	46	1.75	71	3.18	96	4.84
22	0.92	47	1.78	72	3.26	97	4.88
23	0.95	48	1.82	73	3.34	98	4.92
24	0.97	49	1.86	74	3.42	99	4.96
25	1.00	50	1.90	75	3.50	100	5.00

NOTE: %IA < 1.0 is considered inconsequential and shall have a LUF = 0.

Subd. 3 A Charge shall be applied to new development or redevelopment projects. The Charge shall be calculated by multiplying the total Developable Acres of the parcel(s) by a rate (in dollars per acre, as established by City Council resolution) by the LUF (extrapolated from the LUF table noted in subd. 2, above, using the parcel's individually measured percent impervious area). Residential developments up to 5.5 units per acre shall have a LUF of 1.0. There shall be no reduction of the Charges for areas designated for private storm water management facilities or private open spaces.

Subd. 4. The Council may periodically review the Fees and Charges established herein and may revise the storm water unit rate for the Fee or the Plan rate for the Charge to reflect changes in the cost of providing said Program services.

A. As established by Council resolution, the storm water unit rate and the Plan rate may be modified on an annual basis, or

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- B. The Council may set a multi-year series of storm water unit rates or Plan rates, or
- C. The storm water unit rate and the Plan rate shall be adjusted automatically on August 1st of each year based on the change in the Construction Cost Index as measured in the Minneapolis/St. Paul area during the preceding twelve-month period and as published in Engineering News Record.
- D. The Council may, at their discretion, review and adjust the rates at any time.

77A.06. Credits and Incentives. Subdivision 1. Except as provided in this section, no public or private property shall receive Credit or Incentives for any Structural or Non-Structural Best Management Practice unrelated to the City's cost of providing Program services.

Subd. 2. A Credit is an appropriate means of adjusting Fees for Non-Residential property owners, thereby recognizing that effective Structural or Non-Structural Best Management Practices can reduce the City's storm water management burden.

Subd. 3. An Incentive is an appropriate means of recognizing efforts of Residential property owners that implement Structural or Non-Structural Best Management Practices that reduce the City's storm water management burden.

Subd. 4. The City Council may, by resolution, adopt policies recommended by the Director of Public Works or others to grant Credits or Incentives. Adopted policies will be described in a Storm Water Utility Fee Credit Manual prepared by the Director of Public Works and that identifies, among other things, customer eligibility criteria, the Structural and Non-Structural Best Management Practices that qualify for application, calculation methods, and an application form.

Subd. 5. Non-Residential customers that have implemented Structural or Non-Structural Best Management Practices as outlined in the Credit Manual may be eligible for Credits. Credits will be based upon hydrologic and any other pertinent data to be supplied by property owners, which data demonstrates a substantial Program and System benefit, a reduction of service demand, implementation of an approved activity that meets NPDES MS4 permit requirements, or an avoidance of Fund expenditures. Credits shall be generally proportional to the benefit provided to address the water quality, quantity and conveyance needs of the City's Program and System. Once a Credit is awarded, adjustments of Fees shall be made retroactive to the first full monthly billing cycle the Best Management Practice was implemented, but shall not be retroactive for more than the last six monthly billing cycles, based on the month the completed application for Credit was received, and shall not precede the January 2004 billing cycle. Credits for Best Management Practices owned, operated, implemented, and maintained by entities other than the City will only be allowed if a declaration and maintenance agreement is executed

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with the City (for Structural Best Management Practices), right-of-entry for inspections is guaranteed, and a self-reporting process is implemented.

Subd. 6. Residential customers that have implemented Structural or Non-Structural Best Management Practices may be eligible for Incentives. The Council finds that irrespective of the size of a Residential parcel, the amount of storm water runoff and pollutant loading from Residential development is similar and that it would be excessively and unnecessarily expensive to evaluate precisely the Program benefit of Best Management Practices implemented on Residential parcels. Accordingly, Credits will not be issued for Structural Best Management Practices for Residential parcels. Alternatively, the Council may adopt procedures in the Storm Water Utility Fee Credit Manual that provide Incentives, such as rebates or coupons, to Residential customers that implement and maintain Best Management Practices that benefit the City's Program and System, reduce service demand, meet NPDES MS4 permit requirements, or avoid Fund expenditures.

77A.07. Exemptions. Subdivision 1. The Council has determined that all Developed real property in the City contributes storm water runoff to the System and either uses or benefits from its existence. Therefore, except as otherwise provided in this section, all real property in the City, including property that is exempt from property tax, shall be charged the Fee.

Subd. 2. A Fee will not be imposed on the following lands:

- A. Undeveloped land with an insignificant amount of impervious surface (<1%) and with established vegetative ground cover, due to the absence of improvements leading to adverse storm water impacts from these parcels; and
- B. Public transportation streets, roads, highways, trails, bike paths and their rights-of-way, due to the general public benefit.

77A.08. Payment of Fees and Charges. Statements for Fees shall be computed and invoiced monthly by Rochester Public Utilities for each account. Terms for payment of Charges shall be outlined in agreements with developers.

77A.09. Correction of Fee. Subdivision 1. A property owner or the person responsible for paying the Fee may request correction of the Fee by submitting the request in writing to the Director of Public Works stating the grounds for the correction. Grounds for correction of the Fee include:

- A. Incorrect classification of the property for purposes of determining the Fee;

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- B. Errors in the percent impervious area of the parcel or size of the parcel;
- C. Mathematical errors in calculating the Fee to be applied to the property; and
- D. Errors in the identification of the property owner of a property subject to the Fee.

Subd. 2. The Director of Public Works shall make a determination within thirty days after receipt of the owner's completed written request for correction of the Fee. The decision made by the Director of Public Works on a request for correction of the Fee may be appealed to the Common Council. Fee corrections shall be made retroactive for up to the last six monthly billing cycles based on the month the completed application for Fee Correction was received and not to precede the January 2004 billing cycle.

Subd. 3. A property owner must comply with all rules and procedures adopted by the City when submitting a request for correction of the Fee and must provide all information necessary for the Director of Public Works to make a determination on a request for correction of the Fee. If the property owner alleges an error in the percent impervious area of the parcel, the request for correction must include a certification by a registered professional engineer or registered land surveyor of the parcel size, impervious area, and percent impervious area of the property in question. Failure to fully comply with the provisions of this subdivision shall be grounds for denial of the Fee correction request.

77A.10. Assessment of Unpaid Fees. On or before November 1 of each year, Rochester Public Utilities shall certify to the City Clerk a list of unpaid Utility customer accounts showing the names and addresses of all unpaid accounts up to September 30 of that year. On or before November 25 of each year, the Council shall assess the unpaid accounts against the property receiving the use of the storm water facilities. These assessments shall include interest at 8 percent per annum from October 1 to May 31 following. The assessments shall be a lien on the affected properties as shown in the assessment tabulation and shall be collected in the same manner as other special assessments. The sum together with interest shall be credited to the Fund.

77A.11. Purpose of the Fund. The Fund shall be used solely for the following Program purposes:

Subd. 1. The acquisition, by gift, easement, purchase, or condemnation of real and personal property, and interests therein, necessary to construct, operate, maintain, and replace the System.

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Subd. 2. All costs of planning and implementing the Program and MS4 permit, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency storm water management requirements.

Subd. 3. Engineering, debt service and related financing expenses, construction costs for new System components, enlargement or improvement of existing System components, and equipment replacement.

Subd. 4. Operation, maintenance, and replacement of the System.

Subd. 5. Monitoring, surveillance, and inspection of the System.

Subd. 6. Water quality education, improvement, and monitoring programs.

Subd. 7. Retrofitting developed areas for pollution prevention.

Subd. 8. Inspection and enforcement activities associated with the illicit discharge of pollutants to Rochester's water resources, including but not limited to sediment from construction sites.

Subd. 9. Billing, reporting, and other administrative costs, including a payment in lieu of taxes contribution, to the City's General Fund.

Subd. 10. Other activities reasonably required to achieve the purposes of this Chapter.

77A.12. Flooding and Liability. Floods from storm water runoff may occasionally occur that exceed the System capacity that has been constructed, operated, or maintained by funds made available under this Chapter. This Chapter shall not be construed or interpreted to mean that property subject to the Fees and Charges established herein will be free from storm water flooding or flood damage, or that a System capable of handling all storm events can be cost-effectively constructed, operated, or maintained. Nor shall this Chapter create any liability on the part of, or cause action against, the City, or any official or employee thereof, for any flood damage that may result from such storms or the runoff thereof. Nor does this Chapter purport to reduce the need or the necessity for obtaining flood insurance by individual property owners.

Section 2. Effective Date. This Ordinance shall become effective on and after the date of its Publication.

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PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
ROCHESTER, MINNESOTA, THIS _____ DAY OF _____, 2003.

PRESIDENT OF SAID COMMON COUNCIL

ATTEST: _____
CITY CLERK

APPROVED THIS _____ DAY OF _____, 2003.

MAYOR OF SAID CITY

(Seal of the City of
Rochester, Minnesota)